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**IN THE COURT OF APPEALS**

**STATE OF ARIZONA**

**DIVISION TWO**

JASON OSIFE,	)	2 CA-SA 2013-0062
Petitioner/Defendant ,	)	Department A
	)	
vs.	)	Pinal County
	)	Cause No. S1100CR201202531
	)	
The Superior Court of the State of	)	Apache Junction Justice Court
Arizona, In and For the County of	)	TR 2012-01496
Pinal, and the Honorable Gilberto	)	
V. Figueroa, a Judge thereof;	)	<b>RESPONSE TO PETITION FOR</b>
Respondent,	)	<b>SPECIAL ACTION</b>
	)	
The State of Arizona, by and	)	
through the Pinal County	)	
Attorney,	)	
	)	
Real Party in Interest	)	
	)	

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¶1. The State, Real Party in Interest, respectfully requests that this Court decline special action jurisdiction of the Petition filed in this matter. In the event this Court accepts jurisdiction, the State requests that relief be denied.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of August, 2013.

M. LANDO VOYLES  
PINAL COUNTY ATTORNEY

/s/

Ronald S. Harris  
Deputy County Attorney  
Attorney for Real Party in Interest

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## JURISDICTIONAL STATEMENT

¶2. Special action is extraordinary relief and jurisdiction is highly discretionary. *McKaney v. Foreman*, 209 Ariz. 268, 275, ¶ 35, 100 P.3d 18, 25 (2004). Jurisdiction in special actions is reserved for “extraordinary circumstances.” *Williams v. Miles*, 212 Ariz. 155, 156-57, ¶ 9, 128 P.3d 778, 779 (App. 2006). Specifically, special action jurisdiction is appropriate only in narrow circumstances, such as where the issue raised is of statewide importance, is of first impression, involves a purely legal question, or is likely to arise again. *State ex rel. Romley v. Martin*, 203 Ariz. 46, 47, ¶ 4, 49 P.3d 1142, 1143 (App. 2002). Additionally, jurisdiction may be accepted “[w]here there is no equally plain, speedy, and adequate remedy by appeal . . . ” Rule 8, Rules of Proc. Special Actions.

¶3. Here, two courts have already reviewed the issue raised by the Petitioner. After considering the record and hearing arguments, the Respondent Judge held that the trial court did not abuse its discretion in granting the State’s Motion in Limine. Nonetheless, the Petitioner now asks this Court to take the extraordinary step of granting him a third bite at the apple.

¶4. The Petitioner attempts to bolster his argument for jurisdiction by asserting that this Court should accept special actions in the wide range of cases



where statutory interpretation is at issue. According to the Petitioner, appellate courts “*routinely* accept special action jurisdiction to interpret procedural rules.” (Petition at 2; emphasis added.) The Petitioner asks this Court to not only accept that premise, but to somehow expand it to support jurisdiction in cases involving the interpretation of procedural rules. If the jurisdiction standard urged by the Petitioner were to be adopted, then there would be nothing extraordinary about special action jurisdiction, as it would be routinely granted. Both the Rules of Procedure for Special Actions and the caselaw interpreting the rules make clear that is not the standard.

¶5. The Petitioner also attempts to justify his demand for jurisdiction on the unsupported assertion that the issue “affects all defendants in justice and municipal courts as well as superior courts throughout the state,” and thus is of statewide importance. (*Id.*) Contrary to the implication of the Petitioner’s argument, this case presents a more unique circumstance, where he was charged only under A.R.S. § 28-1381(A)(3), as opposed to the majority of such cases where a defendant is also charged under A.R.S. § 28-1381(A)(1).

¶6. The Petitioner asks this Court to accept jurisdiction and grant relief based, in part, on facts that were never presented to the trial court. For example, in his pursuit to have the trial court’s ruling be declared an abuse of discretion, the Petitioner supplemented the record regarding the alleged quantity and quality of

metabolites found, and the source of his marijuana. (Petition, p. 13, ¶29 and p. 12 ¶27).

¶7. Accordingly, the Petitioner has failed to establish that this Court should take the extraordinary step of granting special action jurisdiction. However, in the event this Court nonetheless accepts special action, the State respectfully asks that, based upon the application standard of review and law, that relief be denied.

### **STANDARD OF REVIEW**

¶8. In reviewing a trial court's order within the context of a special action, this Court must find that the trial judge abused his discretion, or exceeded his jurisdiction or legal authority before granting relief. *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 253, ¶ 10, 63 P.3d, 282, 284 (2003). Abuse of discretion has been defined as "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons" *Quigley v. City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App.1982).

### **STATEMENT OF ISSUE**

¶9. The issue presented is whether the Respondent Judge abused his discretion in upholding the granting of the State's Motion in Limine to preclude the Petitioner from presenting an Arizona issued Medical Marijuana Card as an affirmative defense to Driving While there is Any Drug Defined in § 13-1401 or its Metabolite in the Person's Body.

## **STATEMENT OF FACTS**

¶10. On December 27, 2011, at 2:01 a.m., Pinal County Sheriff Deputy Todd observed a Chevrolet Tahoe travelling at 64 miles per hour in a 45 mile per hour zone. When the deputy stopped the vehicle, the Petitioner rolled down all four windows, and Deputy Todd could smell a strong odor of burnt marijuana coming from inside the vehicle. (Petitioner's Appendix Ex. 3, p.2) (hereinafter Petitioner's Appendix shall be referred to as "Pet. App." and the State's Appendix shall be referred to as "St. App.")

¶11. The Petitioner had bloodshot watery eyes, and told Deputy Todd that he had last smoked marijuana four hours earlier. Additionally, the Petitioner also told the deputy that he possessed an Arizona Medical Marijuana card. He later provided the card to Deputy Todd. (Pet. App. Ex 3, p. 2)

¶12. Deputy Todd did not observe any clues with the Petitioner upon conducting the Horizontal Gaze Nystagmus (HGN) test, but did observe four clues on the walk and turn.<sup>1</sup> The Petitioner was placed under arrest and turned over to Pinal County Sheriff Deputy Copeland. Two vials of blood were drawn from the Petitioner, which were tested by the Arizona Department of Public Safety. The

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<sup>1</sup> The State's Motion in Limine and the State's Response to Special Action Complaint inadvertently stated that the four clues were observed on the HGN test. (Pet. App. Ex 3, p. 2; St. App. Ex. 1, p. 2)



results showed that the Petitioner's blood contained tetrahydrocannabinol and carboxy-tetrahydrocannabinol. (Pet. App. Ex 3, pp. 2-3; Pet. App. Ex. 4, p.2).

¶13. The Petitioner was charged with one count of Driving Under the Influence (DUI) under A.R.S. §28-1381(A)(3):

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

...

3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.

¶14. The State filed a Motion in Limine in the trial court, which argued that the introduction of evidence by the Petitioner about his medical marijuana card, marijuana as medicine, or about an illness or injury necessitating the use of marijuana would not be "relevant and would only mislead, confuse the jury and be a waste of time..." in violation of Rules of Evidence, Rule 401 and 403. (Pet. App. Ex 3, p. 5).

¶15. The trial court granted the State's motion, the Petitioner filed a Complaint in Special Action to the Pinal County Superior Court (Pet. App. Ex. 6) and the State filed a response (St. App. Ex. 1). At the oral argument before the Respondent Judge, the Petitioner did not make any offer of proof showing that production of a medical marijuana card would be necessary to a complete defense or that its introduction would be relevant and would not confuse the jury.